IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1223 OF 2005

M/s.Steel Company & others. .. .. Appellants
(Orig. Deft.Nos.1 to 3)

V/s.

The Board of Trustees of the Port of Bombay. .. .. .. Respondents
(Orig. Plaintiffs)

Mr.A.G. Ravankar for Appellants.

Mr.U.J. Makhija i/by M/s.Motiwalla & Co. for Respondents.

CORAM : ROSHAN DALVI, J.

Dated : 21st June, 2007

JUDGMENT :

1. This Appeal challenges the judgment and order of the learned Judge of the Bombay City Civil and Sessions Court, Bombay, dated 27.2.2002 decreeing the Suit of the Respondents. The Appellants have mainly contended that the Suit was barred by the limitation and hence, could not be decreed and that the Suit was not maintainable in the absence of sanction from the Board of Trustees of the Port of

Bombay to file the Suit. The Suit is filed by the Board of Trustees of the Port of Bombay itself (BPT). The BPT is a Corporation sole. There is no provision in the BPT Act to statutorily require a resolution to be passed for appointment of a Director to file a Suit. No such provision is shown to the Court. This contention has been raised by the Appellants by way of an additional issue and has been agitated before this Court placing reliance upon several judgments. Two of these judgments viz. (i) **AIR 1999 S.C. 2947 (The Board of Trustees of the Port of Bombay & ors. vs. M/s.Sriyanesh Knitters)** and **(ii) (1999) 6 S.C.C. 78 (Board of Trustees for the Visakhapatnam Port Trust vs. State of A.P. & ors.)**, which are relied upon by the BPT, do not show any mandatory requirement for the maintainability of the Suit as contended by the Respondents.

2. The other three judgments relied upon by the Respondents viz. (i) **Vol.80 Company Cases 558 (K.N. Sankaranarayanan & anr. vs. Shree Consultations and Services Pvt. Ltd. & ors.), (ii) AIR 1995 Calcutta 169 (A1-Amin Seatrans Ltd. vs. Owners and Party interested in Vessel M.V. `Loyal Bird'** and **(iii) Vol.70 Company**

Cases 388 (Nibro Ltd. vs. National Insurance Co. Ltd.) are Suits filed against Limited Companies. Under the provisions of Order 29 of the Code of Civil Procedure, suits can be filed by and against Companies only upon a resolution of the Company to that effect. The provisions relating to the Limited Companies do not apply to the BPT.

3. The second contention on behalf of the Appellants is that the Suit was barred by the limitation and should have been dismissed. A short chronology of the admitted events would show that the Suit was not barred by limitation. The goods landed in the Port of Bombay in August 1975. The general landing date is stated to be 13.9.1975. The free landing date is stated to be 18.9.1975. The goods were not removed. Hence, wharfage, demurrage and sale warehouse charges came to be payable. The wharfage and sale warehouse charges, which are one time fixed charges, came to be due and payable on 19.9.1975. The Respondents herein had a lien upon those goods. They could sell the goods for recovery of the aforesaid charges. The goods came to be confiscated by the Custom Authorities on 22.8.1979. On and from that date, the lien of the Respondents came

to an end. The right of sale of the goods ended. Only the right to recover the wharfage, demurrage and sale warehouse charges remained. This recovery had to be made through the Court. Hence, the period of limitation commenced to run from the date of the confiscation of the goods.

4. This clear point of law has been considered and laid down in two of the judgments viz. (i) **AIR 2004 Bombay 44 (Board of Trustees of the Port of Bombay vs. Ramanlal Mohanlal Parikh & anr.)** and **(ii) 2007 (2) Maharashtra Law Journal 728 (Board of Trustees of the Port of Bombay vs. M/s.Rainbow Products & anr.).** It has been held in the case of BPT vs. Ramanlal M. Parikh (supra) that the period of limitation starts running from the date when the order of confiscation of goods is passed and communicated to the BPT. In Para-7 of the judgment, it has been observed that Section 58 of the Major Port Trust Act is an enabling provision, enabling the BPT to claim recovery of the payment of rates of goods on the happening of certain events specified therein. The liability of payment of rates commences upon landing of the goods and continues until they are removed from the

premises of the BPT. The right to sue to recover rates of goods would, therefore, accrue to the BPT when the goods are removed from the premises. It is then that the BPT becomes incapable of exercising control over those goods. This happens upon confiscation of the goods since the confiscation by the Custom Authorities is akin to aspiration or a de-jure removal. Consequently, BPT is denuded of its authority upon the goods or to deal with them in any manner. This entitlement of the BPT requires them to apply to the Court for recovery of the rates. This gives the BPT a cause of action to sue. It gets crystallized upon confiscation and the receipt of knowledge thereof. It is from this date, therefore, that the period of limitation begins to run.

5. This judgment is followed in the case of BPT vs. M/s.Rainbow Products (supra) holding that the order of confiscation ascertains and crystallizes the exact liability of the importer for the payment of pre-confiscation charges which are the rates for wharfage and sale warehouse charges claimed by the BPT in the Suit. The right of BPT got crystallized on 22.8.1979. That order was communicated to the

BPT on 29.10.1979. The Suit has been filed on 29.7.1982. The Suit is, therefore, not barred by limitation. The impugned judgment is, therefore, absolutely correct. Consequently, the Appeal is dismissed.

6. There shall be no order as to costs.

(ROSHAN DALVI, J.)